

THE CITY OF CLAYTON

Board of Aldermen – Special Meeting
City Hall – 10 N. Bemiston Avenue
May 20, 2016
3:10 p.m.

Minutes

Mayor Sanger called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Joanne Boulton, Alex Berger III, Rich Lintz, and Ira Berkowitz.

Mayor Sanger
City Manager Owens
City Attorney O'Keefe

Absent: Cynthia Garnholz (*arrived at 3:35 p.m.*) Mark Winings

AN ORDINANCE TO CONSIDER APPROVAL RELATING TO THE SETTLEMENT OF LITIGATION FOR THE 212 S. MERAMEC AVENUE DEVELOPMENT AND TO CONSIDER AN AMENDMENT TO THE REDEVELOPMENT AGREEMENT FOR 212 S. MERAMEC AVENUE

City Manager Owens reported that this is an ordinance to approve a settlement agreement with the other parties in the case of Phillips, et al. vs. Clayton litigation and the Development Agreement with the developers of the apartment tower project at 212 South Meramec Avenue consistent with the settlement agreement.

Doctor Phillips and the other plaintiffs filed suit against the City of Clayton asserting that the City wrongfully rejected their petitions seeking referendum on three ordinances associated with the project at 212 S. Meramec. After a full presentation of the case St. Louis County Circuit Court Judge Thomas Prebil ruled that the city acted properly in rejecting the petitions because a referendum was not permitted under the Charter of the City and the laws of the State of Missouri. The plaintiffs appealed that decision to the Missouri Court of Appeals. A three-judge panel of that court ruled unanimously last December that Judge Prebil and the City were correct. The plaintiffs ask the Missouri Supreme Court to take transfer of the case and on May 3, 2016, the Missouri Supreme Court sustained that request.

As the Board of Aldermen is aware, the developer proceeded with the construction process while the trial and appellate court proceedings were pending. In order to avoid risk and uncertainty associated with protracted appeals discussions were initiated concerning a possible settlement of the dispute in a manner that would allow the project to proceed. Those discussions resulted in the Settlement Agreement submitted to the Board for approval as part of the attached ordinance. The Settlement Agreement has been approved by the plaintiffs and the developer.

The Agreement provides that the incentives for the development project will be reduced from 50% to 20%, provides \$500,000 to be paid by the developer to the Park Tower Condominium Association and \$500,000 to be paid by the developer to the plaintiffs for their costs and expenses of litigation, the installation of a camera facing east on top of the new apartment tower and providing a live Internet feed to units in the Park Tower Condominium, and a requirement that exterior lighting on the new project above the first floor be extinguished at 10 o'clock each evening.

The reduction in development incentives is to be accomplished by an amendment to the Development Agreement previously entered into between the city and developer. The attached ordinance also approves an Amended and Restated Development Agreement to provide for the reduced tax abatement while maintaining all other terms of the previously approved Development Agreement. Recommendation is to approve the ordinance.

Alderman Berkowitz asked if there is something specifically where the developer is also releasing the City.

City Attorney O'Keefe stated that the specific statement is not in the document adding that the litigation involved is no claims between us.

Alderman Berkowitz stated that this does not mean that they cannot bring claims of indemnity later.

City Attorney O'Keefe stated that he would have further conversation with the developers' legal counsel and report back to the Board and the City Manager.

Alderman Boulton introduced Bill No. 6559, an ordinance to consider approval relating to the settlement of litigation for the 212 S. Meramec Avenue Development and to consider an amendment to the Redevelopment Agreement for 212 S. Meramec Avenue to be read for the first time by title only. Alderman Berger seconded.

City Attorney O'Keefe reads Bill No. 6559, an Ordinance approving a Settlement Agreement and Release of Claims Related to the Construction of a Building Located at the Southeast Corner of Meramec and Bonhomme Avenues; Approving an Amended and Restated Development Agreement Related to the Crossing in Clayton Redevelopment Corporation Development Plan; and Authorizing Certain Actions in Connection Therewith for the first time by title only.

The motion passed unanimously on a voice vote.

Alderman Boulton moved that the Board give unanimous consent to consideration for adoption of Bill No. 6559 on the day of its introduction. Alderman Berger seconded.

The motion passed unanimously on a voice vote.

Alderman Boulton introduced Bill No. 6559, an ordinance to consider approval relating to the settlement of litigation for the 212 S. Meramec Avenue Development and to consider an amendment to the Redevelopment Agreement for 212 S. Meramec Avenue to be read for the first time by title only. Alderman Berger seconded.

City Attorney O'Keefe reads Bill No. 6559, an Ordinance approving a Settlement Agreement and Release of Claims Related to the Construction of a Building Located at the Southeast Corner of Meramec and Bonhomme Avenues; Approving an Amended and Restated Development Agreement Related to the Crossing in Clayton Redevelopment Corporation Development Plan; and Authorizing Certain Actions in Connection Therewith for the second time by title only.

Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye. The bill was adopted and became Ordinance No. 6426 of the City of Clayton.

DISCUSSION AND FOLLOW-UP ON THE BOARD OF ALDERMEN RETREAT

Alderman Lintz asked to what extent are the priorities that was discussed at the retreat; will the Board have an opportunity to discuss them further and what are the next steps?

City Manager Owens explained that those priorities become part of the staff's work plan. The items/issues that were decided on have budgetary impacts and are currently being planned. Staff is working on merging the list and he thinks that there is a good option to be considered to help achieve the goals at which will be done as part of the budget process. During this process it will be an opportunity for discussion and he believes that direction will be on track. If modifications are required, or an answer to questions, or perhaps we are not sure which of the three paths we might need to go we will certainly come back and seek the Board's input.

Mayor Sanger commented that he was interested to know what the process would be in order to "meld" the staff's recommendations under the different categories into the recommendations that the Board listed.

City Manager Owens explained that by the Board's adoption of the eight priorities, four of those also included the priorities initiated by staff and the other four priorities were unique to the discussion, but all eight are now adopted.

Mayor Sanger commented that he felt that this most recent (retreat) process was different. In the past processes major positioning, major policy items, and major things were discussed to position them into getting things done. This recent process was about "are we on the right track". He inquired as to what changes if any were needed to make and if a review of how things are being done needs to happen.

Alderman Berger commented that there are some significant priorities that were established several years ago. Complete Streets and streetscape are ongoing projects which are important. Making the downtown more vibrant through committing to events to draw people is another example and he feels that enhancing, refreshing and continuing reinforcement of some of those established big priorities came out of the conversations.

Alderman Boulton added that it was almost more like a refinement.

Alderman Lintz agrees, but his feeling was that they didn't have the conversation about where we were on those projects; have we finished them, or not finished them, or do we want to change the direction. Having a little bit more in a business context strategic plan? Should we have a S.W.O.T. analysis and say where are we? Are we not quite there yet? What else do we need to do? In that context they can start looking at the projects that they and staff come up with and then have a better context for choices. He felt that this part of the process was somewhat missed and suggested in the future they spend some time making sure they understand where they are in the whole "landscape" of things (i.e. what "holes" need to be filled in order to take them where they want to go).

Alderman Boulton said that she found the process was interesting and that how almost everything that they chose fell into one of the key performance areas pretty neatly and that felt comfortable. This being her fifth year and she feels that she knows where they are with the different strategic targets.

Mayor Sanger commented that he felt that being the same group for two consecutive years also made it easier.

Alderman Boulton added that she also felt that it could have been a more dynamic retreat.

Other

Alderman Berger inquired about the dates for the budget work sessions, first scheduled July 15, and he asked if there would be an opportunity to schedule a second meeting. City Manager Owens explained that due to calendar schedules it was impossible to try to schedule a second session. He added that there is always an opportunity to discuss during the public hearing (proposed first reading), or the second reading. Budget materials will be provided to the Board no later than July 1.

Alderman Berkowitz reported that the Clayton Century Foundation (CCF) Executive Committee meeting scheduled for yesterday was cancelled.

The Clayton Recreation, Sports, and Wellness Commission (CRSWC) met today, expressed that Alderman Berger did a stellar job during the discussion (surveys, budgets, financial reports, auditors, etc.).

Alderman Berger reported that the CRSWC met and the Commission was given an overview of projects: (1) two surveys – residential and membership (Dan Krewson did an outstanding job). The surveys were very positive – Center location, cardio machines, and fees. Some issues were pointed out – fitness class space, availability, pool, security, etc. They will meet again in September in a joint meeting with the Board of Education to present the Capital Plan.

There being no further regular business the meeting was adjourned at 3:36 p.m.

Mayor

ATTEST:

City Clerk